THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition Nos.11600 of 2006
(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 31st July, 2006

Between:

Ch.Bhupal Goud .. Petitioner

and

The State of Andhra Pradesh,
rep. by the Mandal Revenue Officer,
Shaikpet Mandal, Hyderabad and another .. Respondents

and

Writ Petition Nos.15521 of 2006
(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Between:

Ch.Bhupal Goud .. Petitioner

and

The State of Andhra Pradesh,
rep. by the Mandal Revenue Officer,
Shaikpet Mandal, Hyderabad and another .. Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition Nos.11600 and 15521 of 2006

COMMON ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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Since both the writ petitions arise out of a common order in common proceeding, they can be disposed of together.

The petitioner seeks a Writ of *Mandamus* declaring the common order passed by the learned Special Court in I.A.Nos.260 and 261 of 2006 in L.G.C.No.27 of 1991, as arbitrary, illegal and unconstitutional.

The petitioner filed I.A. Nos.260 and 261 of 2006 for evidence and for recalling R.W.1 to mark certain documents, which had already been filed on record on 13-10-1992, respectively and both the applications having been dismissed by the Special Court under the impugned order, dated 19-04-2006, in L.G.C.No.27 of 1991, assailing the same he filed the present writ petitions. Petitioner is the first respondent in L.G.C.No.27 of 1991. The first respondent herein is the applicant. The petitioner seems to be the main contesting respondent in L.G.C. According to the averments made *inter alia* in the application that in the counter filed by him earlier, it had not been mentioned about the events that lead to passing of the decree in O.S.No.1241 of 1999, as that suit was filed eight years after the filing of the L.G.C. on the foot of an agreement of sale, which was said to have been executed in the year 1974 and that the vendor therein, by name, Ahmed Abdul Waheed, was not impleaded as a party in the instant L.G.C. and that the petitioner was under wrong impression that the said facts were not necessary to be disclosed, although the petitioner was put in possession of the property pursuant to the said agreement of sale in the year 1974 and that these facts are far subsequent to the filing of the L.G.C. and since subsequent facts could be taken note of, he should be permitted to plead and file the documents.

The State is the contesting respondent. Other respondents denied the allegations made *inter alia* in the affidavit filed in support of the application. The learned Special Court having been of the view that the very claim of the applicant was highly belated and was not maintainable, inasmuch as the petitioner had already filed the judgment copy of O.S.No.1241 of 1999, marked as Ex.B2, certified copy of the memorandum of compromise in I.A.No.752 of 1999 in O.S.No.1241 of 1999, marked as Ex.B4, representation for regularization filed in Ex.B6, dated 11-03-2003 and letter, dated 19-05-2003, marked as Ex.B7, held that the petitioner cannot be permitted to raise a new plea at the fag end of the case. However, the Special Court, while parting with the matter, made an observation that since the petitioner had already filed the proposed documents, as stated above, he was at liberty to explain the said documents during the course of arguments and the same would be considered by the Court.

Sri V.Rajagopal Reddy, learned counsel appearing for the petitioner, represents that the factum of filing of the suit for specific performance and events that transpired subsequent to the filing of the suit were all subsequent facts in the land grabbing case, which had obviously been filed long prior to the filing of the suit, O.S.No.1241 of 1999. The facts pertaining to the suit are very much essential for a just decision of the case. The learned counsel seeks to rely upon certain judgments to buttress the contention that subsequent events can be taken note of. There can be no quarrel with the proposition laid down in the said judgments. It is not necessary, at this stage, to refer to those judgments, since the proposition of law sought to be canvassed is well known and well established. The learned Special Court, as discussed hereinabove, permitted the petitioner to explain the documents on the premise that the documents had already been filed and were available on record and hence arguments could be addressed with reference to those documents. It appears, there is some confusion. The documents, now sought to be filed, have not been supported by a proper plea and the evidence in conformity therewith. When once it is said that the documents had already been there on record, the contention that the plea was highly belated appears to be not sound. The parties are well aware of the factum of filing of the suit and the subsequent events that transpired after the filing of the suit till the passing of the decree. It is only to answer the technical question that there shall be a plea and so as to avoid the mischief that any amount of evidence cannot be considered in the absence of a plea or evidence, which is inconsistent with the plea, perhaps, the petitioner seeks to file additional counter so as to take the said plea and lead evidence in conformity therewith. This crucial aspect has been lost sight of by the learned Special Court. In our considered view, since the documents are already available on record and the parties are posted with facts, the plea to be taken about the subsequent events cannot spring a surprise on the parties and it cannot be considered as a belated one. Exs.B2 to B7 have been filed in usual course along with the other documents. In that view of the matter, the Special Court has committed an error in having not allowed these applications.

For the above reasons, the Writ Petitions are to be allowed by permitting the petitioner to file additional counter and additional affidavit in lieu of the chief-examination in support of the plea to be taken up *inter alia* in the additional counter.

The Writ Petitions are allowed accordingly. Under the circumstances, no order as to costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

31st July, 2006.

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